

Message Text

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ACTION EUR-25

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AMEMBASSY BONN IMMEDIATE

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C O N F I D E N T I A L BERLIN 0882

E.O. 11652: GDS

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1. SUMMARY: REDRAFTS OF BK/O AND BK/L ON PRIVILEGES AND IMMUNITIES ORDINANCE STRIKE US AS IMPROVEMENT. WE BELIEVE IT WOULD BE USEFUL, HOWEVER, TO DELAY ISSUANCE FOR FEW DAYS UNTIL WE CAN STRAIGHTEN OUT LOOSE ENDS INVOLVING GAUS-NIER AGREEMENT. END SUMMARY.

2. UPON RECEIPT OF BK/O AND BK/L TEXTS AGREED IN BONN AND CAPITALS LAST MONTH AND FRG INDICATION IN BONN CROUP THAT IT SAW NO DIFFICULTY WITH SUBMITTING RELEVANT ARTICLES OF GAUS-NIER AGREEMENT TO AK IN ACCORDANCE WITH PROCEDURES OF BKC/L (52)6 AND BK/L (73)21 FOR EXTENSION OF FRG AGREEMENTS WITH GDR TO BERLIN, MISSIONS AGREED THAT TEXTS LOGICALLY SHOULD BE ISSUED AFTER SENAT SUBMITTED RELEVANT ARTICLES, SINCE POINT 3
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OF AGREEMENT PROVIDING THAT PERMANENT REPRESENTATIONS SHOULD

HAVE VIENNA CONVENTION PRIVILEGES AND IMMUNITIES, WAS REASON FOR PROMULGATION OF ORDINANCE IN QUESTION. BRITISH LEGAL ADVISER ACCORDINGLY MADE FORMAL REQUEST TO SENAT ABOUT APRIL 19. BECAUSE OF SENAT REORGANIZATION, DIFFERENT OFFICES NOW HANDLE FRG AGREEMENTS WITH GDR AND WITH FOREIGN COUNTRIES, AND BRITISH REQUEST FELL BETWEEN CRACKS. WE RAISED MATTER WITH SENAT AGAIN MAY 10 AT BRITISH URGING AND DISCOVERED REQUEST HAD BEEN MISDIRECTED. SENAT ASSURED US AGREEMENT OR AT LEAST RELEVANT ARTICLES WOULD BE SUBMITTED SHORTLY.

3. LAST WEEK, HOWEVER, FRENCH ADVISED US THAT THEY REQUIRED NUMBER OF DRAFTING CHANGES IN BK/O AND BK/L BEFORE THEY COULD BE ISSUED AND THAT THEY DID NOT FAVOR EXTENSION OF GAUS-NIER AGREEMENT TO BERLIN BECAUSE AGREEMENT LACKED FORMAL BERLIN CLAUSE. BRITISH, WITHOUT TAKING POSITION ON ISSUE OF WHETHER ARTICLES SPECIFICALLY REFERRING TO FRG REPRESENTATION OF WEST BERLIN'S INTERESTS CONSTITUTED SUFFICIENT "BERLIN STATEMENT" TO MAKE AGREEMENT EXTENDABLE, SAID THEY WISHED TO SEPARATE TWO ISSUES AND HAVE BK/O AND BK/L PROMULGATED AS EXPEDITIOUSLY AS POSSIBLE. SENAT SUBMITTED FULL GAUS-NIER AGREEMENT TO AK PURSUANT TO NORMAL PROCEDURES MAY 20. BRITISH MISSION, AND, WE ASSUME, BRITISH EMBASSY SUCCEEDED IN MOVING FRENCH FROM SOMEWHAT MORE SUBSTANTIAL DRAFTING CHANGES IN BK/O AND BK/L THEY HAD ORIGINALLY INSISTED ON IN BERLIN.

4. SITUATION NOW APPEARS TO BE THAT BK/O AND BK/L AUTHORIZING PROMULGATION BY SENAT OF ORDINANCE CONFERRING CERTAIN PRIVILEGES AND IMMUNITIES ON GDR PERMANENT REPRESENTATION CAN BE ISSUED EARLY THIS WEEK IF CAPITALS AGREE TO TEXTS. FRG AND SENAT APPARENTLY BELIEVE GAUS-NIER AGREEMENT CAN BE EXTENDED TO BERLIN IN NORMAL MANNER BECAUSE OF ARTICLES REFERRING TO BERLIN, AND WE AGREE. BRITISH ARE SKEPTICAL AND FRENCH WOULD HAVE TO BE BROUGHT AROUND. PRESUMABLY BRITISH AND FRENCH COULD REACH DEFINITIVE POSITION DURING WEEK OF MAY 27.

5. WE SUGGEST THAT ISSUANCE OF BK/O AND BK/L BE DELAYED
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UNTIL DEFINITIVE BRITISH AND FRENCH POSITIONS REACHED ON GAUS-NIER QUESTION. APART FROM PROBLEM OF PRIVILEGES AND IMMUNITIES ORDINANCE, GAUS-NIER AGREEMENT HAS SIGNIFICANCE WITH RESPECT TO NATURE OF CONSULTATION WE WILL EXPECT FROM FRG AS IT REPRESENTS WEST BERLIN'S INTERESTS WITH GDR. IT WILL BE RECALLED THAT ALLIES FORMALLY AUTHORIZED FRG TO REPRESENT THOSE INTERESTS IN BK/L(73)21 ON THE GRUNDVERTRAG AND AUTHORIZED EXTENSION

TO WEST BERLIN OF "APPROPRIATE AGREEMENTS BY THE FRG WITH THE GDR" SUBJECT TO SAME PROCEDURES AS IN BKC/) (52)6. GAUS-NIER AGREEMENT IS ONE OF FIRST OF SUCH FOLLOW-ON FRG-GDR AGREEMENTS. POINT 6 OF PROTOCOL VERMERK CONTAINS SPECIFIC GDR ACQUIESCENCE TO REPRESENTATION BY FRG PERMANENT MISSION OF INTERESTS OF WEST BERLINERS WITH RESPECT TO GDR. CLASSIFIED ORAL DECLARATION OF FRG ON POINT 6, WHICH IS CONSIDERED INTEGRAL PART OF GAUS-NIER AGREEMENT, CONTAINS IMPORTANT FRG STATEMENT ON HOW IT SEES SCOPE OF ITS REPRESENTATIONAL RESPONSIBILITY.

6. GAUS-NIER AGREEMENT THUS HAS MEANINGFUL BERLIN ASPECTS. IF IT IS NOT EXTENDED TO WEST BERLIN IN ACCORDANCE WITH PROCEDURES DEVELOPED BY BK/L(73)21 AND BKC/L(52)6 OR ALTERNATIVELY IF ALLIES DO NOT ADDRESS ISSUE RAISED BY ABSENCE OF BERLIN CLAUSE, WE WILL BE WEAKENING EARLY IN GAME FORMAL PROCEDURE FOR ALLIED CONSULTATION AND CONTROL WHICH WE HAVE ESTABLISHED WITH RESPECT TO FRG INTERNATIONAL UNDERTAKINGS AND WHICH HAS PARTICULAR RELEVANCE IN GDR AGREEMENTS THAT WILL OFTEN HAVE DIRECT BERLIN EFFECTS. FRG AND SENAT HAVE ACKNOWLEDGED THIS PROCEDURE BY SUBMITTING AGREEMENT. WHILE WE BELIEVE IT WOULD BE APPROPRIATE TO VIEW SPECIFIC BERLIN PROVISIONS AS BERLIN STATEMENT SUFFICIENT TO WARRANT EXTENSION, WE WOULD NOT WISH TO FORCE ISSUE WITH BRITISH OR FRENCH IF THEY REGARD LACK OF BERLIN CLAUSE AS DECISIVE. WE WOULD STILL BE FACED, HOWEVER, WITH NEED TO TAKE FORMAL ACTION SINCE AGREEMENT HAS BEEN SUBMITTED TO AK. BEST ANSWER THEN, IT SEEMS TO US, WOULD BE TO ISSUE BK/L EXPLAINING THAT ITS FORMAL EXTENSION COULD NOT BE GRANTED IN ABSENCE OF BERLIN CLAUSE BUT THAT ALLIES HAD TAKEN NOTE OF BERLIN UNDERTAKINGS. SAME BK/L LOGICALLY COULD ALSO REFER TO POINT 3 OF GAUS-NIER AGREEMENT SPECIFYING VIENNA
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CONVENTION PRIVILEGES AND IMMUNITIES FOR MEMBERS OF PERMANENT REPRESENTATIONS AND EXPLAIN THAT ALLIES WERE SIMULTANEOUSLY ISSUING BK/O AND BK/L TO ENABLE CERTAIN PRIVILEGES AND IMMUNITIES TO BE PROVIDED SUBJECT TO ALLIED RESERVED RIGHTS AND RESPONSIBILITIES. SAMPLE OF SUCH BK/L WOULD BE:

" 1. WITH REFERENCE TO SENAT LETTER 78 TRANSMITTING THE ABOVE NAMED PROTOCOL IN ACCORDANCE WITH BK/L (73)21, THE ALLIED KOMMANDATURA IS UNABLE TO APPROVE EXTENSION TO THE WESTERN SECTORS OF BERLIN BECAUSE OF THE ABSENCE OF A BERLIN CLAUSE IN THE FORM PRESCRIBED BY BKC/L(52)6. THE ALLIED KOMMANDATURA TAKES NOTE, HOWEVER, OF THE UNDERTAKINGS CONTAINED IN THAT AGREEMENT WITH RESPECT TO THE WESTERN SECTORS, PARTICULARLY POINT 6 OF

THE PROTOCOL VERMERK AND THE DECLARATION OF THE REPRESENTATIVE OF THE FEDERAL REPUBLIC WITH RESPECT TO THAT POINT."

"2. THE ALLIED KOMMANDATURA ALSO TAKES NOTE OF THE UNDERTAKING IN POINT 3 OF THE PROTOCOL CONCERNING PRIVILEGES AND IMMUNITIES TO BE PROVIDED TO THE PERMANENT REPRESENTATIONS OF THE FEDERAL REPUBLIC AND THE GDR. IT HAS TODAY ISSUED BK/O (74) --AND BK/L(74)-- TO ENSURE THAT, SUBJECT ALWAYS TO RESERVED ALLIED RIGHTS AND RESPONSIBILITIES, NO IMPEDIMENT IS ERECTED TO THE PROPER FUNCTIONING OF THE PERMANENT REPRESENTATION OF THE GDR WHICH IS TO BE ESTABLISHED IN BONN."

7 OUR RECOMMENDATION, THEN, WOULD BE THAT WE DELAY ISSUANCE OF BK/O AND BK/L ON PRIVILEGES AND IMMUNITIES FOR FEW DAYS UNTIL BRITISH AND FRENCH POSITION CLEAR ON EXTENSION OF GAUS-NIER AGREEMENT. WE WOULD NOTE THAT WE ARE UNAWARE OF ANY PRESSURE FROM GERMANS FOR IMMEDIATE PROMULGATION AND THERE HAS BEEN NO PUBLIC INTEREST IN ISSUE, EVEN THOUGH ORDINANCE WAS PUBLISHED IN FRG MORE THAN THREE WEEKS AGO. IF BRITISH AND FRENCH AGREE TO EXTENSION OF GAUS-NIER, THAT STEP COULD OCCUR SIMULTANEOUSLY WITH ISSUANCE OF BK/L AND BK/O. IF BRITISH OR FRENCH CANNOT AGREE TO EXTENSION OF GAUS-NIER, WE COULD PROMULGATE BK/O AND BK/L SIMULTANEOUSLY WITH BK/L ON GAUS-NIER ALONG LINES SET FORTH PARA 6 ABOVE. KLEIN
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